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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 BILLY GLENN, KATHY
23 WARBURTON, KIM FAMA,
24 CORINNE KANE, ROXANA
25 FITZMAURICE, and JAHAN
26 MULLA, on behalf of themselves and
27 all others similarly situated,

28 Plaintiffs,

v.

HYUNDAI MOTOR AMERICA and
HYUNDAI MOTOR COMPANY,

Defendants.

Case No. 8:15-cv-02052-DOC-KES

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR CLASS
CERTIFICATION**

Date: October 30, 2017

Time: 8:30 a.m.

Judge: Hon. David O. Carter

Courtroom: 9D

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1 **I. INTRODUCTION**

2 This proposed class action, brought by Plaintiffs in six states, stems from Hyundai's
3 decision to sell vehicles with panoramic sunroofs even though the sunroofs are prone to
4 shattering without warning. Drivers compare the sound of the shattering to that of a
5 gunshot and report being cut by the falling glass, being so startled they veer out of their
6 lanes, and having their vehicles' paint and upholstery damaged by the broken glass.

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 Hyundai has publicly denied there's a problem and refused to cover shattered sunroofs
15 under warranty, claiming instead that flying rocks are to blame.

16 The widespread nature of Hyundai's conduct—concealing a safety defect and
17 refusing to take responsibility—makes class certification appropriate. Classwide proof can
18 answer the main questions in this case: [REDACTED]
19 [REDACTED]
20 [REDACTED] In addition to answering these questions

21 for all class members at once, a certified class action would provide the added benefit of
22 being able to provide relief to all affected drivers. This relief could include an injunction
23 that requires Hyundai to warn drivers, help them avoid being harmed, and fulfill its
24 contractual obligations under its written warranty. Monetary relief can also be provided
25 classwide, as consumers should be compensated for paying far more for their vehicles than
26 they would have had Hyundai complied with the law and publicly disclosed the danger.
27 Plaintiffs therefore ask that the Court certify the proposed classes, appoint class counsel,
28 and direct that notice be sent to class members.

1 **II. FACTUAL BACKGROUND**

2 **A. The Defective Panoramic Sunroofs in Class Vehicles**

3 Panoramic sunroofs are larger than traditional sunroofs, allowing more light to enter
4 the vehicle cabin. (*Id.*, Ex. 2 at 19, Ex. 3 at 28, Ex. 4 at 40, Ex. 5 at 46.)

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 The “Class Vehicles” in this case, which are listed below, each came equipped with
10 a panoramic sunroof:

11

- 2011-2016 model year Sonata Hybrid and Tucson
- 2012-2016 model year Sonata and Veloster
- 2013-2016 model year Santa Fe, Santa Fe Sport, and Elantra GT

14 (*Id.*, Ex. 7 at 61, Ex. 8 at 70, Answer to Second Am. Compl. (Dkt. No. 77) ¶ 20.)

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] Tempered glass is rapidly
24 cooled when it is made so that its outer surface contracts around its center core. (Read
25 Decl. ¶¶ 18, 40.) This process strengthens the glass, but it has a downside: when a crack
26 propagates from the glass’s surface into the compressed core, the entire panel of glass
27 abruptly shatters. (Read Decl. ¶¶ 18, 40; Stein Decl., Ex. 9 at 89.) Shattering can occur
28 immediately after a crack develops or later, as the crack slowly grows until it reaches the

1 center core. (Read Decl. ¶ 41; Stein Decl., Ex. 9 at 86-89.)

2 Next, it is important to understand that cracks grow in tempered glass only when
3 stresses are applied, (Read Decl. ¶ 41; Stein Decl., Ex. 9 at 83-89), [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 _____

26 1 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 **B. The Dangerous Failings of Class Vehicles' Panoramic Sunroofs**

2 Sunroofs are not like tires, brake pads, or other "wear parts"—they should last the
3 life of a vehicle and should withstand the ordinary and foreseeable conditions to which
4 vehicles are exposed. (Hannemann Decl. ¶¶ 24, 25.) This includes exposure to a wide
5 variety of temperatures, vehicle movement, and sudden shocks such as a car wash on a hot
6 day and rocks kicked up off the road. (*Id.* ¶ 25.) But the sunroofs in Class Vehicles do not
7 reliably withstand the stresses to which vehicles are commonly exposed. [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 As a result, although many Class Vehicles are just a few years old, more than a
13 *thousand* Hyundai panoramic sunroofs have shattered already, (Stein Decl., Ex. 30-31 at
14 188-193), and every model and model year of Class Vehicle has suffered from
15 spontaneous shattering. (*Id.*, Ex. 1 at 15; Exs. 32-34 at 194-96.)

16 The shattering endangers drivers, passengers, and anyone else on the road.
17 (Hannemann Decl. ¶¶ 33-43; Stein Decl., Ex. 35 at 229.) Perhaps most notable is the
18 distraction caused by the sudden shattering. It is now well known that driver distraction
19 leads to many crashes, injuries, and deaths each year. (Hannemann Decl. ¶ 34; *see also*
20 Stein Decl., Ex. 28 at 175.) And when panoramic sunroofs shatter in Class Vehicles, the
21 abrupt shattering of a large glass panel directly over a driver's head is so loud many drivers
22 believe they have been in an accident or that a gun was fired, as the following driver reports
23 reflect:

24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 (Stein Decl., Ex. 36 at 241, 245, 270, 273, 277; *see also* Hannemann Decl. ¶ 36; Stein
7 Decl., Ex. 28 at 175; Ex. 27 at 150 (“The driver was not able to see for a moment because
8 glass pieces fell into the vehicle like rain.”).) Even momentary distractions are dangerous,
9 as drivers may leave their lanes when distracted or fail to notice objects, vehicles, and
10 pedestrians entering their paths. (Hannemann Decl. ¶ 35.)

11 Startled drivers may also react by swerving or braking:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
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6 [REDACTED]
7 [REDACTED]
8 (Stein Decl., Ex. 36 at 256, 275, 276, 281, 285, 288; Hannemann Decl. ¶ 35.)

9 Although when tempered glass breaks it is considered safer than some other types
10 of glass, it still has sharp edges that can cut skin and eyes:

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 (Stein Decl., Ex. 36 at 253, 270, 275, 276, 277, 283; *accord* Read Decl. ¶ 16.) [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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2 (Stein Decl., Ex. 36 at 251, 271, 280.)
3 [REDACTED]
4 [REDACTED]
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4 [REDACTED]
5 (Stein Decl., Ex. 36 at 270-271.)

6 **D. Pressured by the NHTSA, Hyundai Implemented a Very Narrow Recall.**

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 In October 2012, the NHTSA opened an investigation, having received several
18 driver complaints of panoramic sunroofs shattering in the 2012 model year Veloster. (*Id.*,
19 Ex. 40.) In its investigation-opening document, the NHTSA wrote “[s]hattering glass
20 could distract the driver, and the glass particles produced could injure occupants.” (*Id.*)
The NHTSA asked Hyundai to provide an assessment of why the sunroofs were shattering.
21 (*Id.*, Ex. 41 at 324-29.) [REDACTED]

22 [REDACTED]
23 [REDACTED]
24 [REDACTED] Instead, Hyundai said an
25 “intermittent malfunction” of an assembly robot damaged some of the glass. (*Id.*)

26 Acquiescing to NHTSA pressure, Hyundai implemented a safety recall, but only for
27 the vehicles manufactured during the short time frame when the assembly robot
28 purportedly malfunctioned, and for just a portion of one model year of one model (the

1 2012 Veloster). (*Id.*, Ex. 42 at 330-31.) [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] Hyundai ultimately expanded the recall
21 only slightly, to encompass about five thousand additional vehicles. (*Id.*, Ex. 51 at 348.)

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

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8 **F. Hyundai Has and Will Continue to Profit from Its Misconduct.**

9 Plaintiffs Roxana Fitzmaurice, Billy Glenn, Kim Fama, Jahan Mulla, Kathy
10 Warburton, and Corinne Kane all purchased Class Vehicles between November 2011 and
11 March 2015 in California, Alabama, New Hampshire, New Jersey, Texas, and
12 Washington, respectively. (*Id.*, Exs. 85 at 888, 86 at 896, 87 at 902, 88 at 905, 89 at 911,
13 90 at 914.) Hundreds of thousands of other individuals have bought the vehicles as well.

14 [REDACTED]
15 Hyundai was able to sell Plaintiffs and the other class members Class Vehicles at prices
16 normally charged for non-defective vehicles. Hyundai thus profited at the expense of
17 Plaintiffs and its other customers, who all received dangerous vehicles worth less than the
18 non-defective vehicles for which they had bargained.

19 To assess the financial harm Hyundai caused consumers at the point of sale,
20 Plaintiffs have retained two expert witnesses—Colin Weir and Steven Gaskin—to
21 measure damages based on conjoint analysis, which uses a combination of economic
22 theory, statistics, and survey data to estimate the decrease in market value that would have
23 resulted had Hyundai disclosed the defect at the time and point of sale. (Gaskin Decl., ¶¶
24 4, 55-57; Weir Decl., ¶ 7, 15.) This methodology is legally sound and is discussed in
25 further detail below.

26 In addition, after selling the defective vehicles, Hyundai has also shirked its post-
27 sale warranty obligations. Hyundai provides a written warranty obligating it to repair or
28 replace components “found to be defective in material or workmanship under normal use

1 and maintenance" within the first five years and 60,000 miles. (Stein Decl., Ex. 91 at 936,
2 Ex. 92 at 988, Ex. 93 at 1023-24) Although Hyundai covers some shattered sunroofs under
3 warranty, [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 Among others, Hyundai has denied warranty coverage for Plaintiffs Corinne Kane
15 (*id.*, Ex. 97 at 1068) [REDACTED]

16 [REDACTED]
17 [REDACTED] Ex. 103 at 140:15-142:24), Kathy Warburton (*id.*, Ex. 98 at 1070 [REDACTED]
18 [REDACTED]
19 [REDACTED], Ex. 104 at 254:5-261:22), Roxana Fitzmaurice (*id.*, Ex.
20 99 at 97:23-98:25, 120:7-21, 139:2-14), Jahan Mulla (*id.*, Ex. 100 at 247:5-250:15), Kim
21 Fama (*id.*, Ex. 101 at 192:25-193:20, 203:9-204:12), and Billy Glenn (*id.*, Ex. 102 at
22 217:21-222:7, 256:1-9.)

23 Among the problems with Hyundai's warranty practice is the fact that highly
24 technical expertise is needed to determine whether a particular sunroof was struck by road
25 debris. (Read Decl. ¶ 43.) [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
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15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 **III. ARGUMENT**

20 Class certification is appropriate when the four factors of Rule 23(a)—numerosity,
21 commonality, typicality, and adequacy—are satisfied and when at least one prong of Rule
22 23(b) is satisfied. As a number of Ninth Circuit and Central District courts have held, cases
23 involving defects in mass-produced vehicles are particularly well-suited for class
certification. *See, e.g., Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168 (9th Cir.
24 2010); *Chamberlan v. Ford Motor Co.*, 402 F.3d 952 (9th Cir. 2005); *Falco v. Nissan N.*
25 *Am.*, No. 13-cv-00686, 2016 WL 1327474 (C.D. Cal. Apr. 5, 2016); *Keegan v. Am. Honda*
26 *Motor Co.*, 284 F.R.D. 504 (C.D. Cal. 2012). That holds true here, where certification is
27 appropriate under both Rule 23(b)(2), because uniform injunctive and declaratory relief

28

1 would benefit all class members, and Rule 23(b)(3), because class members are entitled to
2 monetary relief. Plaintiffs ask that the Court certify classes under both prongs.

3 **A. The Proposed Classes**

4 Plaintiffs seek statewide class certification of their consumer protection, unjust
5 enrichment, and warranty claims under the laws of California, Alabama, New Hampshire,
6 New Jersey, Texas, and Washington. Plaintiffs propose three class definitions: one for
7 their express warranty claims, which includes those owners and lessees who have incurred
8 repair expenses; one for their UCL, Song-Beverly, and unjust enrichment claims, which
9 includes only purchasers and lessees of new vehicles; and one for their remaining
10 consumer protection claims, which covers both new and used purchasers and lessees:

11 *Express Warranty Class: All persons and entities who purchased or leased a
12 Class Vehicle in [the applicable state] and who paid to repair a shattered
13 panoramic sunroof within the applicable warranty period.*

14 *UCL, Unjust Enrichment, & Song-Beverly Class: All persons and entities who
15 bought or leased a new Class Vehicle in [the applicable state].*

16 *Remaining Consumer Protection Claims Class: All persons and entities who
17 bought or leased a Class Vehicle in [the applicable state].*

18 In the past, courts in this circuit have scrutinized proposed class definitions to
19 determine whether they were “ascertainable,” but earlier this year the Ninth Circuit
20 “rejected an ascertainability requirement, holding that ‘the language of Rule 23 does not
21 impose a freestanding administrative feasibility prerequisite to class
22 certification.’” *Estakhrian v. Obenstine*, 2017 WL 2191622, at *22 (C.D. Cal. Feb. 4,
23 2017) (quoting *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1125 (9th Cir. 2017)).
24 Accordingly, proposed class definitions suffice when they use objective characteristics—
25 and they do here since membership turns on whether someone bought a particular vehicle,
26 in a particular state, and whether they paid for sunroof repairs. *See Briseno*, 844 F.3d at
27 1124 (affirming district court that had “held that, at the certification stage, it was sufficient
28 that the class was defined by an objective criterion”).

1 **B. Numerosity Is Satisfied.**

2 Under Federal Rule of Civil Procedure 23(a)(1), the proposed classes must be “so
3 numerous that joinder of all members is impracticable.” While there is not an exact
4 numerical cutoff for numerosity, it is presumed satisfied if a class consists of 40 or more
5 members. *Litty v. Merrill Lynch & Co.*, No. CV 14-0425, 2015 WL 4698475, at *3
6 (C.D. Cal. Apr. 27, 2015). Here, Hyundai sold and leased hundreds of thousands of Class
7 Vehicles, including well more than 40 Class Vehicles in each of the six states for which
8 statewide classes are proposed—Alabama, California, New Hampshire, New Jersey,
9 Texas, and Washington. (Stein Decl., Ex. 106.) Thus, numerosity is satisfied.

10 **C. Common Questions Both Exist and Predominate.**

11 Rule 23(a)(2) and (b)(3) pose closely related requirements. To avoid repetition,
12 Plaintiffs analyze both (a)(2) commonality and (b)(3) predominance together here.

13 Under (a)(2), there must be “questions of law or fact common to the class,” and
14 under (b)(3) those common questions must “predominate over any questions affecting
15 only individual members.” Whereas an individual question is one where class members
16 would need to present evidence that “varies from member to member,” a “common
17 question is one where the same evidence will suffice for each member to make a *prima
facie* showing or the issue is susceptible to generalized, class-wide proof.” *Tyson Foods,
Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (internal quotation marks and brackets
omitted). Determining whether the common questions predominate is not a matter of
21 “nose-counting”; instead, “more important questions apt to drive the resolution of the
22 litigation are given more weight in the predominance analysis over individualized
23 questions which are of considerably less significance to the claims of the class.” *Torres v.
Mercer Canyons Inc.*, 835 F.3d 1125, 1134 (9th Cir. 2016).

25 Below, Plaintiffs show that each of their claims hinge primarily—if not
26 exclusively—on factual and legal issues that can indeed be resolved for all class members
27 using common evidence. The analysis is divided into two categories: (i) Plaintiffs’ non-
28 express-warranty claims, which allege liability based on Hyundai’s pre-sale conduct and

1 seek point-of-sale damages and restitution; and (ii) Plaintiffs' express-warranty claims,
2 which allege liability based on Hyundai's post-sale handling of warranty repairs and seek
3 post-sale damages.

4 **1. Plaintiffs' Non-Express-Warranty Claims**

5 **a) The Predominant Issues**

6 Each of Plaintiffs' non-express warranty claims depend on Plaintiffs' ability to
7 prove the following contentions: (i) Class Vehicles' sunroofs are defective and prone to
8 abruptly shattering; (ii) the shattering is dangerous; and (iii) Hyundai knew of the problem,
9 but neither disclosed it nor fixed it before selling Class Vehicles to class members.

10 If Plaintiffs are able to establish each of those facts, they will prevail under each of
11 the state consumer protection laws at issue in this litigation:

- 12 ▪ California CLRA: Claim turns on whether plaintiffs can show "that a defect ...
13 posed 'safety concerns,' such that defendants' failure to disclose it could
14 constitute a material omission." *Keegan*, 284 F.R.D. at 529.
- 15 ▪ California UCL: Violation can "be prove[n] with common evidence regarding
16 the nature of the design defect..., its likely impact on vehicle safety, what
17 [defendant] knew or did not know, and what it disclosed or did not disclose to
18 consumers." *Id.* at 534.
- 19 ▪ Alabama DTPA: As the Court held earlier in the litigation, a claim can be
20 established if Hyundai failed to disclose a known safety defect. *Glenn v. Hyundai*
21 *Motor Am.*, 2016 WL 3621280, at *13 (C.D. Cal. June 24, 2016).
- 22 ▪ New Hampshire CPA: Claim can be established through "failure to warn of a
23 defective or dangerous condition that could cause personal injury." *McClary v.*
24 *Erie Engine & Mfg. Co.*, 1994 WL 803088, at *2 (D.N.H. Nov. 23, 1994).
- 25 ▪ New Jersey Consumer Fraud Act: Claim can be based on manufacturer's failure
26 to disclose known defect at the time of purchase. *BK Trucking Co. v. Paccar,*
27 *Inc.*, 2016 WL 3566723, at *9 (D.N.J. June 30, 2016).
- 28 ▪ Texas DTPA: Statute is violated when a manufacturer "fails to inform

1 consumers of a defect that presents a safety risk.” *In re Porsche Cars N. Am.*,
2 880 F. Supp. 2d 801, 878 (S.D. Ohio 2012).

3 • Washington CPA: Claim can be based on “knowing failure to reveal something
4 of material importance.” *Id.* at 880-81 (citing *Indoor Billboard/Wash. v. Integra*
5 *Telecom of Wash.*, 170 P.3d 10, 18 (Wash. 2007)).

6 Plaintiffs would also establish their Song-Beverly implied warranty claim and unjust
7 enrichment claims by proving the same set of facts. *See Parenteau v. General Motors,*
8 *LLC*, No. 14-cv-04961-RGK (MANx), 2015 WL 1020499, at *10 (C.D. Cal. Mar. 5, 2015)
9 (Song-Beverly implied warranty violated where vehicles are not sold “in safe condition
10 and substantially free of defects”); *Glenn*, 2016 WL 7507766, at *6 (sustaining Plaintiffs’
11 unjust enrichment claims based on allegations that Hyundai had concealed the defect
12 before Plaintiffs entered into their purchase contracts).

13 **b) The Common Evidence Plaintiffs Will Use**

14 Plaintiffs’ Liability Evidence: Plaintiffs can and will address each of the
15 predominant factual issues in the case using common, generalized evidence. As
16 summarized in the Factual Background section, Plaintiffs intend to prove the existence of
17 the sunroof defect, and Hyundai’s discovery and concealment of it, mostly from Hyundai’s
18 own documents, [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED] Plaintiffs
24 will also rely on the expert opinions of highly qualified glass and automotive experts, who
25 can help explain the nature of the defect in and the combination of common design factors
26 that lead to the shattering. (Read Decl. ¶¶ 5-10; Hannemann Decl. ¶¶ 6-15.)

27 Plaintiffs likewise have common proof of the danger posed by sunroof shattering.
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 Plaintiffs' Evidence of Damages and Restitution: Plaintiffs are not required to show
10 that their damages can be established using common evidence. *Pulaski & Middleman, LLC*
11 v. *Google*, 802 F.3d 979, 988 (9th Cir. 2015). So even if class members ultimately need to
12 submit a claim form or other individualized proof to establish damages, the common
13 liability issues raised by their claims are enough to warrant class certification. *Tyson*, 136
14 S. Ct. at 1045; *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013) ("the
15 presence of individualized damages cannot, by itself, defeat class certification under Rule
16 23(b)(3)"). Using common proof for damages can be simpler for both class members and
17 the Court, however, and Plaintiffs intend to proffer expert testimony to help quantify the
18 classes' damages.

19 Class members' harm may be measured by calculating the difference in market
20 value between the defective vehicles class members actually received and the non-
21 defective vehicles they were entitled to receive.² To measure that difference, Plaintiffs will
22

23 _____
24 ² E.g., *Pulaski*, 802 F.3d at 989 (restitution may be based on what a purchaser would
25 have paid at the time of purchase had the purchaser received full information); *Spann v.*
26 *J.C. Penney Corp.*, No. 12-cv-0215, 2015 WL 1526559, at *9 (C.D. Cal. Mar. 23, 2015)
27 (under the CLRA, plaintiffs can recover the difference between the value parted with and
28 value received); Cal. Civ. Code § 1794 (Song Beverly statute incorporates section 2714
of the Commercial Code, which measures difference between value of goods accepted

offer testimony from Steven Gaskin and Colin Weir. Mr. Gaskin has developed a survey study that he is prepared to execute as part of a conjoint analysis to measure the effect the defect would have had on the market value of Class Vehicles if Hyundai had disclosed its knowledge. (Gaskin Decl., ¶¶ 4-6, 55-57; *see also* Weir Decl. ¶¶ 7, 15.) And Mr. Weir, an economist, is prepared to help explain why that analysis is appropriate economically in these circumstances. (Weir Decl. ¶¶ 16-20.) Similar analyses have been accepted as class-wide proof in automotive and other consumer class actions. *Sanchez-Knutson v. Ford Motor Co.*, 310 F.R.D. 529, 538-39 (S.D. Fla. 2015); *Morales v. Kraft Foods Grp., Inc.*, No. 14-cv-04387, 2015 WL 10786035, at *10 (C.D. Cal. June 23, 2015); *In re ConAgra Foods, Inc.*, 90 F. Supp. 3d 919, 952-54, 1026-31 (C.D. Cal. 2015).

2. Plaintiffs' Express Warranty Claims

To a large degree, Plaintiffs' claims for breach of express warranty also depend on proving the existence of the defect. (*Compare* Stein Decl., Exs. 91-92 at 936, 988 (Hyundai's warranty requires it to repair or replace components that are "defective in material or workmanship")), *with* 15 U.S.C.A. § 2310(d)(1) (the Magnuson-Moss Act provides a claim for any "consumer who is damaged by the failure of a ... warrantor ... to comply with any obligation under ... a written warranty"). Plaintiffs allege the sunroofs installed in Class Vehicles are defective in material or workmanship and therefore Hyundai breached its express warranty by failing to repair and replace them free of charge. (Second Am. Compl. ¶ 41-42.) It makes little sense for class members to try and establish the defect individually, when doing so will require an "elaborate and probably a protracted

and value as warranted); *BMW of N. Am., Inc. v. Gore*, 701 So. 2d 507 (Ala. 1997) (Alabama DTPA damages based on diminution in value of vehicle); *Smajlaj v. Campbell Soup Co.*, 782 F. Supp. 2d 84, 99 (D.N.J. 2011) (New Jersey FCA recovery may be based on product being worth less than promised); *Mercedes-Benz of N. Am. v. Dickenson*, 720 S.W.2d 844, 848 (Tex. App. 1986) (Texas DTP-CPA takes difference between value of property as warranted and as delivered); *Mason v. Mortg. Am.*, 114 Wash. 2d 842, 849 (1990) (Washington CPA damages are intended to give plaintiffs the benefit of their bargain).

1 trial,” which is “exactly the sort of common issue for which class actions are designed.”
2 *Anthony v. Gen. Motors Corp.*, 33 Cal. App. 3d 699, 705 (1973); *accord Wolin*, 617 F.3d
3 at 1174 (finding the existence of a common defect to be among the questions common to
4 the class for breach of warranty claim); *Yamada v. Nobel Biocare Holding AG*, 275 F.R.D.
5 573, 579 (C.D. Cal. 2011), *amended* at 2012 WL 12883221 (C.D. Cal. Aug. 31, 2012)
6 (common questions included existence of defect).

7 Plaintiffs’ express warranty claim also poses the related common question of how
8 to interpret the Hyundai warranty contract. (Stein Decl., Exs. 91-92 at 935, 988.) As this
9 Court recognized in an earlier order, it may be necessary to determine whether the sunroof
10 defect is better characterized as a “design defect” or a “manufacturing defect,” and whether
11 that distinction matters under the language of Hyundai’s warranty contract. ECF No. 76 at
12 9; *see also Daniel v. Ford Motor Co.*, 806 F.3d 1217, 1224 (9th Cir. 2015) (discussing
13 argument that “materials and workmanship” language excludes design defects). There
14 would be great benefit to interpreting Hyundai’s warranty contract for all class members
15 at once. *In re Med. Capital Sec. Litig.*, 2011 WL 5067208, at *3 (C.D. Cal. July 26, 2011)
16 (where a “breach of contract claim involves alleged violations of standardized contracts”
17 the claim is “especially amenable to resolution by common proof”).

18 The same is true for interpreting the exclusion language in Hyundai’s warranty
19 contract and whether Hyundai can enforce it. [REDACTED]

20 [REDACTED]
21 [REDACTED] It is Hyundai’s burden, when
22 denying coverage under the exclusion, to establish the exclusion’s applicability. *Simpson*
23 *Strong-Tie Co. v. Gore*, 49 Cal. 4th 12, 23 (2010) (“It is a ‘familiar’ and ‘longstanding’
24 legal principle that ‘[w]hen a proviso … carves an exception out of the body of a …
25 contract those who set up such exception must prove it.’”) (quoting *Meacham v. Knolls*
26 *Atomic Power Laboratory*, 554 U.S. 84 (2008)). [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED] accord (Read Decl. at ¶ 43.) (highly technical expertise is needed for such an
2 analysis, beyond what a dealership technician would possess.) As a result, a classwide
3 determination can and should be made as to the propriety of Hyundai's reliance on the
4 exclusion provision.

5 **D. Plaintiffs' Claims Are Typical of Other Class Members.**

6 Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be]
7 typical of the claims or defenses of the class." "[T]he typicality requirement is permissive
8 and requires only that the representative's claims are reasonably co-extensive with those
9 of absent class members; they need not be substantially identical." *Rodriguez v. Hayes*,
10 591 F.3d 1105, 1124 (9th Cir. 2010). "In determining whether typicality is met, the focus
11 should be on the defendants' conduct and plaintiff's legal theory, not the injury caused to
12 the plaintiff." *Lozano v. AT &T Wireless Servs., Inc.*, 504 F.3d 718, 734 (9th Cir. 2007).
13 Thus, typicality is "satisfied when each class member's claim arises from the same course
14 of events, and each class member makes similar legal arguments to prove the defendant's
15 liability." *Rodriguez*, 591 F.3d at 1124.

16 Here, Plaintiffs have essentially the same claims as everyone else who bought or
17 leased a Class Vehicle: Hyundai sold or leased them vehicles with panoramic sunroofs
18 with the known risk of shattering without warning. This common course of conduct gives
19 rise to the same claims for all class members and caused each the same injury: they paid
20 an inflated price for a vehicle due to Hyundai's concealment of the defect. *See Wolin*, 617
21 F.3d at 1175 (plaintiffs' claims were typical because they, like all class members, bought
22 defective vehicles and sought to recover pursuant to the same legal theories, including
23 violation of consumer protection laws and breach of warranty).

24 Likewise, Plaintiffs' express warranty claims are reasonably coextensive with those
25 of absent class members. Like every other proposed class member, Plaintiffs purchased
26 Class Vehicles equipped with panoramic sunroofs subject to the same written warranty.
27 And as with every other proposed class member, Hyundai breached its express warranty
28 obligations by failing to pay for repairs to the vehicles' sunroofs—even though neither

1 Hyundai nor its dealerships employed technicians capable of reliably determining whether
2 any particular sunroof was struck by an external object. *See Just Film, Inc. v. Buono*, 847
3 F.3d 1108, 1117 (9th Cir. 2017) (quoting Newberg on Class Actions § 3:31 (5th ed.)
4 (plaintiff's claim was typical because it shared "some common question of law and fact
5 with class members' claims.").

6 **E. The Adequacy Requirement Is Satisfied.**

7 The final Rule 23(a) requirement demands that "the representative parties will fairly
8 and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement
9 is met as long as the named plaintiffs and their counsel (1) have no conflicts of interest
10 with other class members, and (2) will prosecute the action vigorously. *Hanlon v. Chrysler*
11 *Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998). Here, there are no intra-class conflicts. To
12 the contrary, Plaintiffs and the members of the classes share the same interest in holding
13 Hyundai accountable for knowingly selling defective Class Vehicles. In addition,
14 Plaintiffs' testimony and their effort throughout this litigation demonstrate that they
15 understand their role and obligations as class representatives and will continue to press for
16 classwide relief. (Stein Decl., ¶ 8.) Plaintiffs' counsel, for their part, are experienced
17 attorneys with a history successfully litigating complex class actions, including against
18 Hyundai and other manufacturers. (*Id.* ¶¶ 6-7; Stephens Decl. ¶¶ 2-4.) Counsel have
19 successfully opposed two motions to dismiss, uncovered key documents in discovery, and
20 engaged four experts to study and help explain technical issues for the factfinders in this
21 litigation. (*Id.* ¶ 8.) There is no reason to doubt the adequacy of this representation under
22 Rule 23(a)(4) or Rule 23(g).

23 **F. Injunctive and Declaratory Relief Are Appropriate Per Rule 23(b)(2).**

24 Although Plaintiffs seek monetary relief through this action, the injunctive and
25 declaratory relief they seek is important enough, alone, to justify class treatment. *See*
26 *Raffin v. Medicredit, Inc.*, No. 15-cv-4912-GHK, 2017 WL 131745, at *10 (C.D. Cal. Jan.
27 3, 2017) (certifying claims for injunctive relief under (b)(2) and claims for monetary relief
28 under (b)(3)). And with the four elements of Rule 23(a) all satisfied, Rule 23(b)(2)

1 certification is “unquestionably satisfied when members of a putative class seek uniform
2 injunctive or declaratory relief from policies or practices that are generally applicable to
3 the class as a whole.” *Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014).

4 Here, Plaintiffs seek just such injunctive and declaratory relief, targeting uniform
5 Hyundai’s policies and practices: Hyundai has not warned the drivers in jeopardy about
6 the continued risk of abrupt panoramic sunroof shattering. Nor has Hyundai provided
7 drivers with information that could prevent or mitigate the effects of sunroof shattering—
8 whether through practical advice (to keep the sun shade closed to prevent glass from
9 raining down) or repair procedures. [REDACTED]

10 [REDACTED]
11 [REDACTED] Declaratory and injunctive relief
12 can halt these uniform unlawful practices, making (b)(2) certification appropriate.

13 **G. The Superiority of the Class Action Device**

14 Having already discussed how the common questions predominate over any
15 individual ones, the only remaining consideration for certifying a Rule 23(b)(3) class for
16 monetary relief is whether “a class action is superior to other available methods for fairly
17 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Among the factors
18 to be considered are: (A) class members’ interests in individually controlling the
19 prosecution of separate actions; (B) the extent and nature of any litigation concerning the
20 controversy already begun by class members; (C) the desirability of concentrating the
21 litigation of the claims in this forum; and (D) anticipated difficulties in managing a class
22 action. *Id.* “Where recovery on an individual basis would be dwarfed by the cost of
23 litigating on an individual basis, this factor weighs in favor of class certification.” *Wolin*,
24 617 F.3d at 1175.

25 Here, as in *Wolin* and other cases decided in this district, “[f]orcing individual
26 vehicle owners to litigate their cases, particularly where common issues predominate for
27 the proposed class, is an inferior method of adjudication.” *Wolin*, 617 F.3d at 1176. This
28 is particularly true because the “funds required to marshal the type of evidence, including

1 expert testimony, that will be necessary to pursue these claims against [a] well-represented
2 corporate defendant[] would discourage individual class members from filing suit when
3 the expected return is so small.” *Keegan*, 284 F.R.D. at 549. Finally, concentrating class
4 claims in this forum is desirable, as Hyundai is headquartered in California and the lawsuit
5 is brought on behalf of drivers within this state and several others.

6 **IV. CONCLUSION**

7 For the above reasons, Plaintiffs ask that the Court certify the proposed classes,
8 appoint class counsel, and direct the dissemination of class notice.

9
10 DATED: June 15, 2017

Respectfully submitted,

11
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